

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:04CR43-10

UNITED STATES OF AMERICA

VS.

BILLY EUGENE PROFFITT, JR.

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ORDER

THIS MATTER is before the Court on Defendant's motion to modify judgment and sentence.

Defendant asks the Court to postpone any further payments made toward the restitution and assessment balances from his prison income until such time as he is released from prison and becomes gainfully employed. So rather than seeking to modify his judgment and sentence, it appears the Defendant is requesting the Court adjust the payment schedule for his restitution payments.

The Bureau of Prisons (BOP) has the authority to place a defendant in the Inmate Financial Responsibility Program based on the wording contained in the criminal judgment. ***United States v. Watkins*, 161 F.**

App'x 337 (4th Cir. 2006); *Bramson v. Winn*, 136 F. App'x 380 (1st Cir. 2005). The authority and method of collecting through the Inmate Financial Responsibility Program as well as the determination of the Defendant's ability to pay has been delegated to the BOP by federal regulations. **28 C.F.R. §§ 545.10-.16.** Defendant is, therefore, obligated to exhaust all administrative remedies through the BOP before approaching the appropriate district court. ***McGhee v. Clark*, 166 F.3d 884, 885-87 (7th Cir. 1999); *Aja v. Bureau of Prisons Staff*, 202 F.3d 267 (table), 1999 WL 1336093 (6th Cir. 1999); *United States v. Rumney*, 86 F.3d 1147 (table), 1996 WL 325485 (1st Cir. 1996); *Indelicato v. Suarez*, 207 F.Supp.2d 216 (S.D.N.Y. 2002).** Thereafter, a defendant may challenge such payments but only by filing the appropriate pleading in the district court of confinement, not with the sentencing court. ***Matheny v. Morrison*, 307 F.3d 709, 712 (8th Cir. 2002); *Moore v. Olson*, 368 F.3d 757, 759 (7th Cir.), *cert. denied*, 543 U.S. 949 (2004).**

IT IS, THEREFORE, ORDERED that the Defendant's motion to modify judgment and sentence is hereby **DENIED**.

Signed: August 24, 2007

A handwritten signature in dark ink, appearing to read "L. H. Thornburg", is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

